

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

STONEY WILLIAM AULT,

Petitioner,

vs.

**Civil Action No. 2:04 CV 94
(Maxwell)**

WILLIAM S. HAINES, Warden,

Respondent.

ORDER

It will be remembered that the above-styled action was instituted on December 10, 2004, by the Petitioner, a state prisoner proceeding *pro se*, who seeks to pursue his remedies in this habeas corpus action pursuant to 28 U.S.C. § 2254.

It will further be remembered that, pursuant to Standing Order of Reference for Prisoner Litigation Filed Pursuant To 28 U.S.C. § 2254 (Standing Order No. 5), the above-styled habeas corpus action was referred to United States Magistrate Judge John S. Kaull for initial review and report and recommendation.

On July 12, 2005, United States Magistrate Judge John S. Kaull filed a Report And Recommendation/Order in the above-styled habeas corpus action, wherein he recommended that the Respondent's Motion To Dismiss be granted; that the Petitioner's Petition Under 28 U.S.C. § 2254 For Writ Of Habeas Corpus By A Person In State Custody be denied and dismissed, without prejudice, for failure to exhaust his state judicial remedies; and that the Petitioner's Motion To Enter Into Record Proof Of Petitioner's 100% Disability Due To Post-Traumatic-Stress-Disorder, As Relevant Both To Grounds In Habeas (E.G., Speedy Trial Claim), And To Need For Appointment Of Counsel In This Action and Motion To Appoint Counsel In Habeas Corpus Action be denied.

Additionally, the Order portion of Magistrate Judge Kaull's Report And Recommendation/Order vacated Magistrate Judge Kaull's May 23, 2005, Order and, in light of said action, denied as moot both the Petitioner's Amended Petition Under 28 U.S.C. § 2254 For Writ Of Habeas Corpus By A Person In State Custody and the Petitioner's Motion/Request for Judge Maxwell to Review Order of Magistrate Kaull on Appeal, and Request for C.O.A. to Fourth Circuit if Needed, and Request for Clarification of Said Order of May 23, 2005.

Magistrate Judge Kaull's Report and Recommendation expressly advised the Petitioner, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections to said Report And Recommendation/Order within ten days after being served with a copy of the same.

The record in this matter reflects that on July 22, 2005, the Petitioner's Answer to Report and Recommendation/Order of July 11, 2005 by United States Magistrate Judge John S. Kaull, and Objections was filed with the Court.

Upon examination of Magistrate Judge Kaull's Report And Recommendation/Order, it appears to the Court that the issues raised by the Petitioner in his Petition Under 28 USC § 2254 For Writ Of Habeas Corpus By A Person In State Custody were thoroughly considered by Magistrate Judge Kaull in his Report And Recommendation/Order. Furthermore, upon consideration of the Petitioner's objections to said Report And Recommendation/Order, it appears to the Court that the Petitioner has not raised any issues that were not thoroughly considered by Magistrate Judge Kaull in said Report And Recommendation/Order. Moreover, the Court, upon an independent *de novo* consideration of all matters now before it, is of the opinion that Magistrate Judge Kaull's Report and Recommendation/Order accurately reflects the law applicable to the facts and circumstances before the Court in the above-styled habeas corpus action. Therefore, it is

ORDERED that the Report And Recommendation/Order filed by United States Magistrate

Judge John S. Kaull on July 12, 2005 (Docket No. 24), be, and the same hereby is, **ACCEPTED** in whole and that this habeas corpus action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Respondent's Motion To Dismiss (Docket No. 14), be, and the same is hereby, **GRANTED**. It is further

ORDERED that the Petitioner's Petition Under 28 USC § 2254 For Writ Of Habeas Corpus By A Person In State Custody (Docket No. 1), be, and the same is hereby, **DENIED** and **DISMISSED, without prejudice**, for failure to exhaust his state judicial remedies.

In light of the dismissal of the Petitioner's Petition Under 28 USC § 2254 For Writ Of Habeas Corpus By A Person In State Custody, it is further

ORDERED that the following Motions be, and the same are hereby, **DENIED**:

1. Motion and pleadings and legal arguments to move the Federal District Court to accept jurisdiction in Petitioner's Habeas Corpus based both on Exhaustion of State Remedies and Inadequate and Ineffective State remedies (Docket No. 6);
2. Motion To Appoint Counsel In Habeas Corpus Action (Docket No. 21);
3. Motion To Enter Into Record Proof Of Petitioner's 100% Disability Due To Post-Traumatic-Stress-Disorder, As Relevant Both To Grounds In Habeas (E.G., Speedy Trial Claim), And To Need For Appointment Of Counsel In This Action (Docket No. 22).

For purposes of clarifying the record in the above-styled habeas corpus action, it is further

ORDERED that the Clerk of Court shall mark the docket herein to reflect that the Order entered by United States Magistrate Judge John S. Kaull on May 23, 2005, and filed herein on May 24, 2005 (Docket No. 17), was vacated by the Order portion of his July 12, 2005, Report And Recommendation/Order. It is further

ORDERED that the Clerk of Court shall also mark the docket herein to reflect that the

Petitioner's Amended Petition Under 28 USC § 2254 For Writ Of Habeas Corpus By A Person In State Custody (Docket No. 19) and the Petitioner's Motion/Request For Judge Maxwell To Review Order Of Magistrate Judge Kaull On Appeal, And Request For C.O.A. To Fourth Circuit If Needed, And Request For Clarification Of Said Order Of May 23, 2005 (Docket No. 18) were denied as moot by the Order portion of Magistrate Judge Kaull's July 12, 2005, Report And Recommendation/Order. It is further

ORDERED that should the Petitioner desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$250.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court Of Appeals For The Fourth Circuit.

ENTER: September 30, 2005

/S/ Robert E. Maxwell
United States District Judge